

April 7, 2000

The Honorable Carol M. Browner
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dear Administrator Browner:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel (SBAR Panel or the Panel) convened for the planned potential revisions to two regulations that address concentrated animal feeding operations (CAFOs) that the Environmental Protection Agency (EPA or the Agency) is currently developing. These two regulations are the National Pollutant Discharge Elimination System (NPDES) CAFO Regulations (40 C.F.R. §122.23, and Part 122, Appendix B), and the Effluent Limitation Guidelines (ELG) for Feedlots (40 C.F.R. Part 412), which includes two parts (Beef & Dairy, Pork & Poultry).

On December 16, 1999, EPA's Small Business Advocacy Chairperson convened this Panel under section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). In addition to the Chair, the Panel composed of the Director of the Office of Wastewater Management's Permit Division of EPA, the Director of the Office of Science and Technology's Engineering and Analysis Division of EPA, the Deputy Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel for Advocacy of the Small Business Administration.

The Report includes a discussion of the options under consideration for the proposed regulation under development, a description of the Panel's outreach to small entity representatives, summary of small entity comments received by the Panel, and the Panel's findings and discussion.

Sincerely,

/S/

Thomas E. Kelly, Chair
Small Business Advocacy
U.S. Environmental Protection Agency

/S/

John T. Spotila, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

/S/

Jere W. Glover, Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/S/

Sheila E. Frace, Director
Engineering and Analysis Division
Office of Water
U.S. Environmental Protection Agency

/S/

Charles H. Sutfin, Director
Water Permits Division
Office of Water
U.S. Environmental Protection Agency

Enclosure

Executive Summary

Small Business Advocacy Review Panel Report National Pollutant Discharge Elimination System (NPDES) And Effluent Limitation Guideline (ELG) Regulations For Concentrated Animal Feeding Operations (“CAFO Rules”)

This document serves as an executive summary of the Report of the Small Business Advocacy Review Panel (SBAR Panel or the Panel) convened for the Environmental Protection Agency’s (EPA) planned proposed rulemaking on National Pollutant Discharge Elimination System (NPDES) & Effluent Limitation Guideline (ELG) Regulations For Concentrated Animal Feeding Operations (“CAFO Rules”). In the 1970s, EPA promulgated two regulations under the Clean Water Act that directly affect CAFOs. The first is the NPDES regulations for CAFOs which define which animal feeding operations (AFOs) are CAFOs (40 CFR 122.23, and Part 122, Appendix B). The second regulation is the effluent limitation guidelines (ELGs) for feedlots (40 C.F.R. § 412), which establishes the technology-based effluent standards on which the permits for certain CAFOs are based.

Since the mid-1970s, significant progress has been made in implementing CWA programs and in reducing water pollution. Despite such progress, however, serious water quality problems persist throughout the country. To mitigate the actual and potential water quality impacts posed by CAFOs, EPA is revising the NPDES regulations for CAFOs, with the following goals:

- Update the current regulations to reflect current industry characteristics and practices;
- Make the current regulations simpler and easier to understand; and
- Ensure that all CAFOs with a reasonable potential to discharge are permitted.

The substantial size of the industry and the challenges associated with implementing NPDES regulations for CAFOs have made revising the NPDES regulations and the ELG for CAFOs a key EPA objective.

On December 16, 1999, EPA’s Small Business Advocacy Chairperson (Thomas E. Kelly) convened this Panel under section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). In addition to its chairperson, the Panel is composed of the Directors of the Water Permits Division and the Engineering and Analysis Division within EPA’s Office of Water, the Deputy Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB), and the Chief Counsel for Advocacy of the Small Business Administration (SBA).

It is important to note that the Panel’s findings and discussion are based on the information available at the time this report was drafted. EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during the remainder of the rule development process as well as from public comment on the proposed rule. Any options the Panel identifies for reducing the rule’s regulatory impact on small entities may require further analysis and/or data collection to ensure that the

options are practicable, enforceable, protective of public health, environmentally sound and consistent with the Clean Water Act.

SMALL ENTITY OUTREACH

To facilitate regulation development, EPA has actively involved interested parties in the development of the proposed rule. As part of these efforts, EPA has provided many opportunities for input in this rulemaking process, including eleven public outreach meetings on the Draft Unified National AFO Strategy. All participants in the public sessions, including numerous small entities, were given the opportunity to sign up and provide their comments to a panel consisting of EPA, USDA and local representatives. In addition, in September 1999, EPA was invited to meet with the Local Government Advisory Committee, Small Community Advisory Subcommittee. At this Federal Advisory Committee Act meeting, EPA described the CAFO regulatory revisions being considered, and responded to questions concerning the effect of EPA's regulatory actions on small communities. EPA has also visited over 50 swine and poultry sites and 60 dairy and beef sites to learn about animal feeding operations and waste management practices.

In early September 1999, in anticipation of the SBREFA process, EPA distributed background information and materials to potential Small Entity Representatives (SERs). On September 17, 1999, EPA held a conference call for these potential SERs to provide input on key issues relating to the proposed regulatory changes to the "CAFO Rules". Twenty-seven potential SERs from the beef, dairy, swine, poultry, and exotic animal livestock industries participated in the call.

On December 16, 1999, the Small Business Advocacy Review (SBAR) Panel was convened to collect the advice and recommendations of the SERs that may be subject to a proposed rule. Consistent with SBREFA, and to ensure reasonably balanced representation, thirty-four SERs were selected to participate in the SBREFA process, including many that participated in the September 17 call.

On December 28, 1999, the Panel distributed an outreach package to the SERs to prepare them for a January 5, 2000 conference call with the SBAR Panel. Twenty-two SERs participated in this conference call and provided their verbal comments to the SBAR Panel. During this conference call, SERs were also encouraged to submit written comments. SERs were given an additional opportunity to make verbal comments during a second conference call on January 11, 2000. (See Section 8 for a summary of SER comments.)

PANEL FINDINGS AND DISCUSSION

Under the RFA, the Panel considered four regulatory flexibility issues related to the potential impact of the rule on small entities:

1. The type and number of small entities to which the rule will apply.
2. Record keeping, reporting and other compliance requirements applicable to small entities.
3. The rule's interaction with other Federal rules.
4. Regulatory alternatives that would minimize the impact on small entities consistent with the stated objectives of the applicable statute (Clean Water Act).

The Panel's most significant findings and discussion with respect to each of these issues are summarized below. For a full discussion of the Panel findings and recommendations, see Section 9 of the Panel report.

1. Number of Small Entities

For a complete description and estimate of the small entities to which the proposed rule will likely apply, see Section 5 of the Report. Based on input from SERs and the Panel, EPA revised the methodology used to develop these estimates and will continue to refine them before publishing its proposal. The Panel notes that the revised methodology outlined in Section 4 may not accurately portray actual small businesses in all cases across all sectors. The Panel recognizes that under this small business definition, EPA will have to regulate some small facilities to meet its obligations under the Clean Water Act, but urges EPA to consider the small business impact of doing so.

2. Potential Reporting, Record Keeping, and Compliance Requirements

Record Keeping Related to Off-Site Transfer of Manure

EPA is considering requiring CAFO operators that send manure off-site to maintain records of each transfer, including date, recipient name and address, quantity transferred, and an analysis of the manure content. EPA is also considering requiring CAFO operators to provide any off-site recipient of manure with the analysis of manure content and a brochure (to be supplied by EPA) describing the recipient's responsibilities for appropriate manure management.

The Panel discussed the issue of whether such record keeping and reporting requirements would have significant practical utility, either to a CAFO operator or to regulatory authorities. The Panel believes that the requirement to provide nutrient content information to manure recipients this would be minimally burdensome if analysis of this content is required as part of the CNMP to ensure proper land application. However, if the CAFO operator has no need of this information for his or her own purposes, and has not conducted the appropriate analysis, it may be more efficient to leave analysis of nutrient content to the manure recipient. The Panel recommends that EPA give careful consideration to all proposed record keeping requirements and explore options to streamline these requirements for small entities.

Permit Application and Certification Requirements

EPA is considering several options that would revise the applicability requirements for operations in the intermediate size category, currently defined as 300 to 1000 animal units (AUs). Under one option, all operations in this size range would be required either to apply for an NPDES permit, or to file a certification check list indicating that they are not likely to discharge significant quantities of pollutants to waters of the US. This check list could include such items as adequate facility design to contain runoff in a large storm, use of appropriate BMPs, and land application of manure at agronomic rates. An additional option would require facilities that are not able to meet the certification requirements to file a more comprehensive permit application, but still allow the permitting authority to determine that no permit is required. Under this approach operations in the intermediate size range would effectively be tiered based on their potential to discharge, and only operations with a reasonable potential to discharge would ultimately be required to obtain a permit.

The Panel notes the substantial number of small entities in the intermediate size range and recommends that EPA carefully consider the burden of any additional certification or application requirements. If EPA decides to propose a tiered approach, the certification check list should be designed to minimize both the required information and the substantive operational requirements for facilities with the lowest potential to discharge. The Panel recommends that EPA carefully consider such options if it pursues a certification approach.

The Panel further notes that EPA has not ruled out the option of requiring a full permit application from all operations in the intermediate size range. The Panel is concerned that such an approach may impose significant burden with limited environmental benefits, and recommends that EPA carefully consider appropriate streamlining options, such as the tiered approach discussed above, before considering a more burdensome approach.

Finally, before adding any new application or certification requirements for operators in this size range, EPA should carefully weigh the burden and environmental benefits of expanding the scope of the regulations in this way.

Frequency of Testing

EPA is currently considering proposing that soil testing be required periodically (e.g., once every 3 years) and that manure be tested more frequently (e.g., annually) because its content is potentially more variable than soil. The Panel agrees that testing manure and soil at different rates may be appropriate, but is concerned about the burden of any inflexible testing requirements on small businesses. The Panel thus recommends that EPA consider leaving the frequency of required testing to the discretion of local permit writers, and request comment on any testing requirements that are included in the proposed rule. It might be that small businesses could test less frequently and still generate sufficient information for proper manure

management. The Panel recommends that EPA carefully weigh the small business burdens relative to the need for information in determining appropriate testing frequencies.

Groundwater Requirements Where Linked to Surface Water

EPA is exploring an option under which CAFOs would be required to determine whether they have a reasonable potential to discharge to ground water with a direct hydrological connection to surface water. This determination would likely require hiring an assessor. If such a potential to discharge were established, the proposed rule might specify additional monitoring (which may require the operator to drill wells), record keeping and reporting requirements and compliance requirements (e.g., lining existing lagoon(s) to prevent leaching) to prevent or reduce discharges to groundwater.

Because of the potentially high costs to small operators associated with such an option, the Panel recommends that EPA give careful consideration to the associated small businesses impacts, and in a manner consistent with its legal obligations, balance these against any identified environmental benefits. The Panel also recommends that, if EPA decides to propose any such requirements, EPA consider streamlining the requirements for small businesses (e.g., sampling at reduced frequencies) or exempting them altogether.

3. Relevance of Other Federal Rules

The Panel is not aware of any other Federal rules that may duplicate, overlap, or conflict with the proposed rule.

4. Regulatory Alternatives

The Panel considered a wide range of options and regulatory alternatives for reducing the burden on small business in complying with the revisions under consideration. As part of the process, the Panel requested and received comment on several ideas for compliance flexibility that were suggested by SERs and Panel members. The Panel took considerable time in addressing the concerns of the small entities who indicated their belief that their businesses may have to close if relief is not considered for their industry. Taken together, the Panel believes that these options would provide meaningful relief to small businesses in each of the industry sectors potentially affected by revisions to the ELG and NPDES requirements for CAFOs, while still protecting the program's environmental goals.

Revised Applicability Thresholds

Currently, size thresholds for applying CAFO requirements are included in both the ELG and NPDES regulations. The ELG regulation specifies a 1000 AU threshold above which CAFOs are subject to ELG guidelines. The NPDES regulations provide different CAFO definitions and designation criteria

CAFOs for operations in different size ranges: operations above 1000 AUs; operations with 300 to 1000 AUs; and operations with less than 300 AUs;

EPA is not considering changing the designation criteria for operations with less than 300 AUs. This includes the criterion that the permitting authority must conduct an on-site inspection of any AFO, in making a designation determination (40 CFR 122.23(c)(3)).

EPA is considering changing the criteria for defining and/or designating operations in the 300-1000 size range as CAFOs by including different or additional conditions. The Panel recommends that the Agency carefully evaluate the potential benefits of any expanded requirements for operations in this size range and ensure that those benefits are sufficient to warrant the additional costs and administrative burden that would result for small entities.

As for compliance costs, one approach would be for EPA to consider less stringent effluent limitations guidelines for operations under 1000 AUs. Currently, for those operations that are permitted, permit conditions are based on the best professional judgement (BPJ) of the local permit writer. EPA should give serious consideration to continuing this approach. One potential drawback with it, according to one of the SERs, is that local permit writers may look to guidelines designed for larger operations for guidance in determining BPJ, even though these guidelines may be overly stringent for smaller operations. Establishing less stringent guidelines for smaller facilities, based on consideration of economic achievability, could result in permit conditions that are more appropriately tailored to smaller operations.

The Panel recommends that EPA give serious consideration to the issues discussed by the Panel when determining whether to establish less stringent effluent limitations guidelines for smaller facilities, or to preserve maximum flexibility for the best professional judgement of local permit writers.

To the extent that EPA is considering incremental additions to regulatory requirements, the Panel encourages EPA to reassess its size thresholds in those sectors where there are a significant number of small businesses over 1000 AUs. EPA should take into consideration the possibility for adverse economic impacts to small businesses with more than 1000 AUs as it considers economic achievability and environmental benefits in deciding whether to adjust the threshold upward for a given industry sector. The Panel also encourages EPA to consider additional ways of extending flexibility to operators with over 1000 AUs in order to address the concern of small businesses in this size category. For example, EPA might allow such operations the option to certify or demonstrate through a permit application that they do not have a reasonable potential to discharge or do not pose a significant risk to water quality, similar to the options discussed in section 9.2 above for operations below 1000 AUs.

25-year, 24-hour Storm Event

Currently, AFOs that do not discharge except in a 25-year, 24-hour storm event are excluded from the definition of a CAFO and, therefore, are not required to obtain an NPDES permit absent designation as a CAFO. EPA is considering removing this exemption. This would not affect the 25-year, 24-hour storm design standard in the ELG for feedlots.

The Panel agreed that removing this exemption is reasonable for large facilities (currently defined as those over 1000 AUs), because of their significant potential for environmental harm if not properly managed. However, the Panel is concerned that removing this exemption may significantly impact small businesses with over 1000 AUs and encourages EPA to explore options for providing additional flexibility to operations in this size range.

The Panel was divided on whether it would also be appropriate to remove the exemption for facilities below the 1000 AU threshold. All Panel members acknowledged the possibility that there are facilities in this size range that currently do not have sufficient manure management and containment provisions in place to prevent discharge, and yet believe that they do not need a permit because of this exemption. The Panel recognizes the environmental benefits of capturing within the permitting process such facilities. However, the Panel also recognized that eliminating the exemption would require facilities that do properly qualify for it -- e.g., they do have sufficient manure management and containment in place or, for some other reason, do not discharge except in a 25-year, 24-hour storm -- to apply for a permit or certify that none is needed. EPA is considering several options to minimize the impacts of removing this exemption. Under the certification checklist option, the exemption could effectively be maintained, but with the added requirement that a facility demonstrate to the permitting authority its ability to comply with the terms of the exemption (no discharge except in a 25-year, 24 hour storm event) by filling out the checklist or, in some cases, submitting a permit application.

The Panel recommends that EPA carefully weigh the costs and benefits of removing the exemption for small businesses. If EPA decides to remove the exemption, it should fully analyze the incremental costs associated with permit applications for those facilities not presently permitted that can demonstrate they do not discharge in less than a 25-year, 24-hour storm event, as well as any costs associated with additional conditions related to land application, nutrient management, or adoption of BMPs that the permit might contain. EPA should also consider reduced application requirements for small operations affected by the removal of the exemption.

Manure and Wastewater Storage Capacity

The Panel notes the SERs' concern about the high cost of additional storage capacity and recommends that EPA consider low-cost alternatives in its assessment of best available technologies economically achievable, especially for any subcategories that may include small businesses.

Land Application

EPA is considering revising the criteria for defining and designating operations in the 300-1000 AU size category to include over-application of manure and wastewater to farmland.

The Panel is concerned that requiring permits from operations in this middle size category that do not pose a significant risk to water quality may increase the regulatory burden on small farmers without providing corresponding environmental benefits.

The Panel agrees that if manure and wastewater are applied to land at agronomic rates and a facility is designed to contain the discharge from a 25-year, 24-hour storm, then that facility would have minimal potential to discharge or adversely affect water quality. However, it is also possible that an operation may land apply in excess of agronomic rates but still not discharge, depending on such factors as annual rainfall, local topography, and distance to the nearest stream. The Panel recommends that EPA consider such factors as it develops any certification and/or permitting requirements related to land application.

The Panel also notes the concerns of other SERs regarding the practical difficulties of ensuring that manure is always applied at agronomic rates. The Panel recommends that EPA continue to work with USDA to explore ways to limit permitting requirements to the minimum necessary to deal with such threats and to define what is “appropriate” land application consistent with the agricultural stormwater exemption.

EPA is also considering including substantive compliance requirements related to land application of manure and other CAFO waste waters in the proposed rule. These could include the development and implementation of CNMPs, as well as specific requirements for applying at a phosphorous-based (P-based) rather than a nitrogen-based (N-based) rate in certain circumstances. SERs expressed concerns about application of manure at phosphorus-based (P-based) rates. The Panel notes the high cost of P-based application relative to N-based application, and supports EPA’s intent to require the use of P-based application rates only where necessary to protect water quality, if at all, keeping in mind its legal obligations under the CWA. If the soil is not phosphorus-limited, then nitrogen-based (N-based) application should be allowed. The Panel recommends that EPA consider leaving the determination of whether to require the use of P-based rates to BPJ, and continue to work with USDA in exploring such an option.

Co-Permitting

EPA is considering a regulatory change that would require corporate entities that exercise substantial operational control over a CAFO to be co-permitted. A majority of SERs expressed opposition to such an approach. They were concerned that co-permitting could decrease the operator’s leverage in contract negotiations with the corporate entity, increase corporate pressure on operators to indemnify corporate entities against potential liability for non-compliance on the part of the operator, encourage corporate entities to interfere in the operational management of the feedlot in order to protect against such liability, provide an additional pretext for corporate entities to terminate a contract when it was to their financial advantage to do so, restrict the freedom of operators to change integrators, and generally decrease the profits of the operator.

A few SERs, who themselves were not involved in a contractual relationship with a larger corporate entity, favored co-permitting as a way of either leveling the playing field between contract and independent operators, or extracting additional compliance resources from corporate entities.

Despite general concern over the economic implications of co-permitting for the contractor, several SERs voiced their support for placing shared responsibility for the manure on the integrators, especially in the swine sector.

The Panel did not reach consensus on the issue of co-permitting. While the Panel shares the concerns raised by some SERs, the Panel also believes that there is potential for environmental benefits from co-permitting. For example, co-permitted integrators may be able to coordinate manure management for growers in a given geographic area by providing centralized treatment, storage, and distribution facilities -- though this could also happen through market mechanisms without co-permitting if it resulted in overall cost savings. Co-permitting could also motivate corporate entities to oversee the environmental compliance of their contract growers, in order to protect themselves from potential liability, thus providing an additional layer of environmental oversight.

The Panel also realizes, and is concerned, that any co-permitting requirements may entail additional costs, and that co-permitting cannot prevent these costs from being passed on to small operators, to the extent that corporate entities enjoy a bargaining advantage during contract negotiations. The Panel thus recommends that EPA carefully consider whether the potential benefits from co-permitting warrant the costs particularly in light of the potential shifting of those costs from corporate entities to contract growers.

The Panel also recommends that if EPA does require co-permitting in the proposed rule, EPA consider an approach in which responsibilities are allocated between the two parties such that only one entity is responsible -- the one with primary responsibility -- for compliance with any given permit requirement. Flexibility could also be given to local permit writers to determine the appropriate locus of responsibility for each component. Finally, the Panel recommends that if EPA does propose any form of co-permitting, it address in the preamble both the environmental benefits and any economic impacts on small businesses that may result and request comment on its approach.

CNMP Preparer Requirements

One regulatory change currently under consideration would require permittees to have CNMPs developed by certified planners. The Panel notes that several SERs expressed concerns about this and indicated that they could write their own plans with adequate financial and technical assistance (e.g., a user-friendly computer program). The Panel recommends that EPA work with USDA to explore ways for small businesses to minimize costs when developing CNMPs. EPA should continue to coordinate with other federal, state and local agencies in the provision of low-cost CNMP development services, and should

facilitate operator preparation of plans by providing training, guidance and tools. EPA expects that many operations could become certified through USDA or land grant universities to prepare their own CNMPs.

General vs. Individual Permits

Another regulatory change under consideration involves requiring individual permits for CAFOs that meet certain criteria, or increasing the level of public involvement in general permits for CAFOs. Several SERs commented that they did not support increasing the use of individual permits for operations under 1000 AUs, because it would be too resource intensive, both for operators and for permitting agencies. SERs also expressed concern that greater public involvement in the permitting process could risk compromising confidential business information and slow the permitting process down. This latter concern would be compounded if permit revisions to address operational changes were repeatedly subject to public challenge. The Panel recommends that EPA not expand the use of individual permits for operations with less than 1,000 AUs. EPA expects that general permits will be issued for operations with less than 1000 AUs, except where special circumstances warrant otherwise, such as when an operation has a history of noncompliance.

Immature Animals

EPA is considering whether to include immature animals for all animal types in determining the total number of animal units at a CAFO. Currently, immature animals are counted (and given equal weight as mature animals) in the poultry, beef and exotics sectors, but are not counted in the dairy and swine sectors.

The SERs were divided on this issue. The Panel discussed this issue but did not come to any recommendation as to whether or not immature animal should be considered in the determination of who is a CAFO. However, to the extent that immature animals are considered in this determination, the Panel recommends that EPA consider an approach that would count immature animals proportionally to their waste generation relative to mature animals. EPA should also consider the effect this will have on small businesses and consider establishing less costly or burdensome requirements for these operations.

5. Other Recommendations

Benefits

Several SERs expressed concern that EPA had not developed an assessment of the environmental benefits of the potential regulatory changes. EPA did provide the Panel with preliminary information on the estimated total amount of manure and manure nutrients generated on livestock and poultry operations differentiated by sector and broad facility size class. However, the Panel felt that these estimates were too preliminary to provide to SERs.

The Panel thus recommends that, as EPA moves forward in developing and ultimately selecting regulatory options, EPA carefully evaluate, in a manner consistent with its legal obligations, the relative costs and benefits (including quantified benefits to the extent possible) of each option in order to ensure that the options selected are affordable (including to small farmers), cost-effective, and provide significant environmental benefits.

Costs

Several SERs noted their concerns that the model farm costs were underestimated because the unit costs did not account for the wide variability of site-specific circumstances and because EPA had overestimated the number of operations that had implemented certain controls. The Panel recommends that EPA continue to refine the estimated costs of these proposed rules and, in doing so, consider the additional information provided.

Public Availability of CNMP

SERs suggested that CNMPs be retained onsite, made available only to State and EPA authorities, and exempt from public disclosure when submitted to State and EPA authorities. EPA is currently evaluating what information in a CNMP could be considered proprietary business information and is researching the extent to which public disclosure is legally required.

The Panel urges EPA to consider the legitimate business concerns of CAFO operators in keeping CNMPs and other proprietary business information confidential. In a manner consistent with its legal obligations. EPA should continue to explore ways to balance the operators' concerns over the confidentiality of information that could be detrimental if revealed to the operators' competitors, with the public's interest in knowing whether adequate practices are being implemented to protect water quality.

Dry Manure

EPA's CAFO regulations currently apply to laying hen or broiler operations which have liquid manure handling systems or use a continuous flow watering system. As a result, unless designated as a CAFO, many broiler operations and laying hen operations are not subject to the Effluent Limitations Guidelines requirements.

EPA believes proper management is necessary to ensure that dry manure handling does not result in a discharge of pollutants. EPA also believes that control of land application of dry manure is important because data indicate that over application results in nutrients running off into surface water. EPA currently plans to propose changes to the CAFO definition so that laying hen and broiler operations with dry chicken manure handling systems would be included within the definition of a CAFO, if they meet the other regulatory criteria.

The Panel recommends that in evaluating potential requirements for dry manure poultry operations, EPA consider the effects of any such requirements on small businesses. To the extent that small businesses are regulated, EPA should consider less costly or burdensome requirements for the small businesses affected.

Coordination with State Programs

The Panel notes that some states already have effective permitting programs for CAFOs in place. The Panel recommends that EPA consider the impact of any new requirements on existing state programs and include in the proposed rule sufficient flexibility to accommodate such programs where they meet the minimum requirements of federal NPDES regulations. The Panel further recommends that EPA continue to consult with states in an effort to promote compatibility between federal and state programs.

The Panel believes EPA should carefully consider all comments received during this outreach process on these and other issues of concern to small entities. A full discussion of the comments received from SERs and Panel recommendations is included in the report.